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April 20, 2011

Secretary Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **WC Docket No. 09-197: Opposition of California Rural ILECs to Requests for Forbearance From Rural "Service Area" Requirements in 47 U.S.C. Section 214(e)(5) and 47 C.F.R. Section 54.207 by NTCH, Inc. and Cricket Communications, Inc.**

Dear Secretary Dortch:

On behalf of a group of small, rural Incumbent Local Exchange Carriers serving rural and remote areas of California (collectively, the "California Rural ILECs"¹), we are writing to express concerns regarding two pending requests for forbearance from the requirement that prospective Eligible Telecommunications Carriers ("ETCs") serve the entirety of the rural telephone company service areas in which they seek designation. In separate requests for forbearance, NTCH, Inc. ("NTCH") and Cricket Communications, Inc. ("Cricket") (collectively, "Petitioners") ask the Federal Communications Commission ("FCC") to forbear from applying the requirements of 47 U.S.C. Section 214(e)(5) and 47 C.F.R. Section 54.207 in connection with Petitioners' respective requests for ETC designation for the purpose of providing federal Lifeline subsidies within their wireless service territories. The requirements at issue state that a prospective ETC must serve the entirety of each rural telephone company exchange area in which it seeks designation. To deviate from these requirements, the applicant must follow a specific procedure for service area redefinition, as outlined in 47 C.F.R. Section 54.207.

¹ The California Rural ILECs are the following carriers: Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company.

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Because forbearance from the rural "service area" requirement could cause harm to the California Rural ILECs and their customers, we urge the FCC not to grant Petitioners' requests. Rather than grant forbearance from this longstanding requirement, the FCC should rely on existing service territory redefinition requests, which are better suited to take into account the specific circumstances of requests to designate an ETC footprint that is different from the exchange areas of underlying rural ILECs. The "service area" requirement is still an important requirement even where an ETC applicant is only requesting authority to receive Lifeline discounts. While "Lifeline only" requests may not implicate "creamskimming" in the same way as requests for full ETC designation, permitting a competitive ETC to serve only the lower-cost portions of the rural telephone company's service area could reduce rural telephone companies' customer bases overall, and compromise their ability to continue to provide service to customers in the higher-cost portions of their service territories. These requirements are not appropriate for forbearance. The ETC process generally, and the "service area" requirement specifically, are being evaluated in the course of the FCC's universal service Notice of Proposed Rulemaking ("NPRM"). See *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, FCC 11-13, ¶¶ 88-89. To the extent that changes to the process are necessary, they should be considered in that proceeding, not in the context of these carrier-specific forbearance requests.

The California Rural ILECs learned of Petitioners' requests after the comment deadlines associated with each Petition had already passed. If they had known about these Petitions earlier, the California Rural ILECs would have opposed both Petitions in response to the respective Public Notices by which comment was sought. The California Rural ILECs first became aware of the Petitions in connection with the California Public Utilities Commission's ("CPUC") review of Cricket's request for "Lifeline only" ETC designation throughout California. Without seeking a waiver of the "service area" requirement through the established process under 47 C.F.R. Section 54.207, Cricket nevertheless sought designation as an ETC in some portions – but not the entirety – of the California Rural ILECs' designated exchange areas. Despite this clear omission, and over the California Rural ILECs' objections, the CPUC granted Cricket's request in CPUC Resolution T-17266. That Resolution is being challenged through the Commission's administrative review process. See *Small LECs Application for Rehearing of Res. T-17266*, A.11-01-003 (filed January 5, 2011). NTCH has not yet sought designation in any portion of California, but if its petition is granted, NTCH could seek ETC status in rural telephone company service areas in California without having to seek redefinition of those service areas on a carrier-specific basis. Neither Cricket nor NTCH should be able to avoid the process set forth in 47 C.F.R. Section 54.207.

Petitioners argue that their requests have met the standard for forbearance under 47 U.S.C. Section 160. However, neither Petition correctly assesses the potential impact that forbearance from the "service area" requirement would have on consumers or ILECs in rural areas. The relief requested in the Petitions is not in the public interest, and the Petitions do not satisfy the requirements of 47 U.S.C. Section 160, subsections (a)(2), (a)(3), and (b). Some of

the California Rural ILECs serve large populations of Lifeline-eligible customers; for at least three of the California Rural ILECs, LifeLine customers comprise more than 30% of the overall customer base. If competitive ETCs could serve only the Lifeline customers in the low-cost areas along highways and in towns (where they are more likely to have reliable wireless service) without having to also serve the Lifeline customers in higher-cost areas, the competitor could significantly reduce revenues for a rural ILEC, and threaten the ability of that ILEC to serve customers (including Lifeline customers) in the most remote areas of its service territory. This impact would be magnified for any carrier whose Lifeline customers are concentrated in lower-cost portions of its service territory. As NTCH acknowledges, the Federal-State Joint Board noted concerns about the "different competitive footing" afforded to rural telephone companies. *NTCH Petition*, at p. 4 (citing *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87 (1996) ¶ 172). Under the existing ETC process, the impact on rural ILECs and their customers from any service area redefinition can and should be evaluated under 47 C.F.R. Section 54.207. The Petitions would eliminate that process, to the detriment of rural consumers in the California Rural ILEC service territories. This result is contrary to the public interest.

Both Petitioners insist that the Petitions should be granted because "creamskimming" is not possible in the context of serving Lifeline customers. Whether it is called "creamskimming" or some other phenomenon, the fact remains that permitting designation of ETCs in only a portion of rural service territories can have a detrimental impact on rural ILECs and their customers, as described herein. Moreover, "creamskimming" is not the only issue involved in an assessment of whether a study area redefinition should be granted. The proposed redefinition must be considered as a whole in light of any relevant public interest factors specific to rural telephone companies, as required under 47 U.S.C. Section 214(e)(1)(A). Petitioners should not be able to side-step the service territory redefinition process simply by alleging that "creamskimming" is not taking place.

To date, no carrier has been granted forbearance from 47 U.S.C. 214(e)(5) or 47 C.F.R. Section 54.207; these Petitions would be the first of their kind. If these Petitions are granted, the rural "service territory" requirement will be effectively eliminated throughout the country as to Lifeline ETC requests. State commissions will not be able to consider concerns such as those raised herein, and all "Lifeline only" ETCs will be permitted to serve in whatever footprint they choose, regardless of the impacts on rural carriers and communities. If the Petitions are granted, the state commissions and the FCC will no longer have the ability to be sensitive to the impacts that wireless ETC designation at a sub-service area level could have in certain geographic areas, and amongst certain populations. The Commission should retain the flexibility that exists in the current rules to address these important impacts where they are presented.

The Petitioners have not demonstrated that the "service area" redefinition process is overly burdensome. Rather, they focus on arguing that the process is unnecessary, and that removal of this process would allow them to more easily bring their services to additional areas.

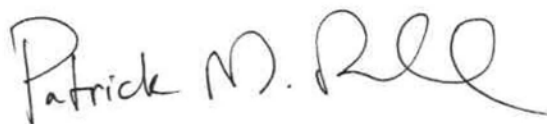
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As discussed above, the redefinition process remains useful to prevent harm to rural carriers and their customers. The Petitions do not provide sufficient information for the FCC to weigh the burden associated with the redefinition process against the value of the analysis conducted through that process. Petitioners have not shown that the existing procedure is not working efficiently or that change is needed to avoid burdens on prospective ETCs.

To the extent that Petitioners wish to seek elimination or streamlining of the service area requirement, the FCC has provided a vehicle for that debate to take place. The ETC process is under examination in the FCC's recently-released universal service NRPM. The NPRM specifically notes that "ETCs are required to offer . . . supported services 'throughout the service area for which the designation is received,'" and seeks comment on "whether [to] . . . modify the ETC requirements" FCC 11-13, at ¶ 89. Comments on these issues were due on April 18, 2011. Rather than reform the ETC process through forbearance petitions such as these, the FCC should address any needed changes to the process through the notice and comment process already established in the NRPM.

The California Rural ILECs respectfully request that the FCC take these views into account as it evaluates the Cricket and NTCH Petitions for Forbearance. As discussed above, the current ETC "service area" redefinition process remains important even in the context of "Lifeline only" ETC requests. To the extent that the process requires reform, these Petitions are not the proper vehicle for such changes. The FCC should reject these Petitions and rely on the open NPRM to entertain any modifications to the ETC process, including any changes to the "service area" requirement.

Very truly yours,

A handwritten signature in black ink that reads "Patrick M. Rosvall". The signature is written in a cursive, flowing style.

Patrick M. Rosvall

PMR:ncg

cc: Matthew A. Brill, Counsel for Cricket Communications
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